

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

DAVID MARTINEZ aka  
ROBERT ANDREAS VASQUEZ,

Plaintiff,

vs.

U.S. Congressman MATTHEW  
MARTINEZ, et. al.,

Defendants.

No. C 13-1053 PJH (PR)

**ORDER OF DISMISSAL**

Plaintiff, a prisoner at Salinas Valley State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983.

**DISCUSSION**

**A. Standard of Review**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'  
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief  
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is  
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained  
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the  
8 framework of a complaint, they must be supported by factual allegations. When there are  
9 well-pleaded factual allegations, a court should assume their veracity and then determine  
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct.  
11 1937, 1950 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
13 elements: (1) that a right secured by the Constitution or laws of the United States was  
14 violated, and (2) that the alleged deprivation was committed by a person acting under the  
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

#### 16 **B. Legal Claims**

17 Plaintiff's complaint is rambling, confusing and incomprehensible and the court is not  
18 certain what relief plaintiff seeks. Plaintiff has filed similar cases in this district, No. C 12-  
19 6515 PJH (PR), and in the Eastern District of California, No. 12-2562 JAM CKD.

20 "Under Ninth Circuit case law, district courts are only required to grant leave to  
21 amend if a complaint can possibly be saved. Courts are not required to grant leave to  
22 amend if a complaint lacks merit entirely." *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir.  
23 2000); see also, *Smith v. Pacific Properties and Development Corp.*, 358 F.3d 1097, 1106  
24 (9th Cir. 2004), citing *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) ("a district  
25 court should grant leave to amend even if no request to amend the pleading was made,  
26 unless it determines that the pleading could not be cured by the allegation of other facts.").  
27 This appears to be one of those relatively rare cases when to grant plaintiff leave to amend  
28 would be patently futile based on the discussion above.

**CONCLUSION**

This action is **DISMISSED** with **PREJUDICE** as frivolous and for failure to state a claim upon which relief may be granted.

**IT IS SO ORDERED.**

Dated: April 22, 2013.



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PHYLLIS J. HAMILTON  
United States District Judge

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